IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.742 OF 2004

Nityanand Nayak ...Petitioner

v/s

M/s Trans Asia Carpets Ltd. ...Respondents

Mr Rajesh Gehani for Petitioner.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 27TH JULY 2006.

P.C. :-

1. By this petition, the petitioner challenges the award dated 19th April 2001 passed by the Labour Court, Mumbai. By that award, the Labour Court has directed the respondents to permit the petitioner to join his duties as a Driver, but has denied the relief of continuity in service and that has given rise to this petition. The facts that are relevant and material for deciding this petition are that the petitioner admittedly completed two years of service with the respondent - Company as a Driver. His salary was Rs.3,200/- p.m. According to the petitioner, his services were terminated without following due process of law by the respondents with effect from 16th November 1997. Therefore, the first issue before the Labour Court was whether the termination of the services of the petitioner was legal or illegal. The defence of the respondents was that the respondents did not terminate the services of the petitioner but the petitioner abandoned the services. Therefore, the second issue that was considered was whether the respondents proved that the petitioner abandoned the services. The third issue was if the termination of the services of the petitioner is illegal, whether he is entitled to relief of reinstatement in service and the fourth issue to be

considered was whether the petitioner is entitled for full back wages or back wages in part or he is not entitled to any back wages. So far as the first issue is concerned, the Labour Court has recorded a finding in favour of the petitioner. The Labour court has held that the respondents terminated the services of the petitioner without following due process of law and therefore, the termination of the services of the petitioner by the respondents is illegal. The Labour Court has recorded a finding against the respondents and in favour of the petitioner on the second issue and it has held that the respondents have not been able to establish that the petitioner abandoned his services voluntarily. The Labour Court has held that the petitioner is entitled to get back his job, but the Labour court denied him reinstatement in service, in the sense, that the petitioner has been denied continuity in service. Perusal of the award shows that nowhere the Labour Court has given any reason why when the termination of the service of the petitioner has been found to be illegal still the petitioner is not entitled to reinstatement in service and why he has to be appointed by the respondents as a fresh appointee. I do not find any material produced on record by he respondents which will justify denial of reinstatement in service to the petitioner on finding that the termination of his service by the respondents was

illegal. Normally, reinstatement in service follows a finding that he termination of service is illegal unless it is established on record that granting reinstatement in service will not be proper because there is an element of loss of faith or such other thing. In the present case, I do not find any material produced on record by the respondents to indicate that the petitioner was not entitled to continuity in service. Thus, I find that the Labour Court has committed an error of law in denying the relief of continuity in service to the petitioner. The Labour Court has also denied back wages to the petitioner totally. Perusal of the award shows that the Labour Court has found that admittedly the petitioner was employed elsewhere from June 1999 to July 2000. There is no evidence produced on record to prove that the petitioner was employed after July 2000 and still the labour Court has totally denied back wages to the petitioner and the only reason that has been given is that the petitioner did not get registered with the Employment Exchange after he lost his job with Venkatesh Textile in July 2000. From the failure of the petitioner to get his name registered with the Employment Exchange, the Labour Court has drawn an inference that he was earning enough income and therefore, he was not in need of job. In my opinion, due to failure of the petitioner to get his name registered with the Employment Exchange an inference

that the petitioner was drawing enough income cannot be drawn. There can be so many reasons as to why a person may not have registered his name with the Employment Exchange. One of the reason can be that he does not need a job, but the Court cannot record a finding on such an inference. When from a fact, more than one inference can be drawn, the Court cannot rest its finding on one of the inferences. Thus, I find that there is no material on record to show that the petitioner was gainfully employed after the termination of his services on 16th November 1997 except for the period from June 1999 to July 2000 and therefore, in my opinion, the petitioner would be entitled for payment of back wages from the date of termination of the service till he is reinstated pursuant to the impugned award except for the period from June 199 to July 2000. In the result therefore, petition succeeds and is allowed, the award made by the Labour Court dated 19th April 2001 is modified to the following extent.

2. The respondent - Company is directed to reinstate the petitioner in service with continuity in service and pay him back wages for the period from 16th November 1997 to the month of May 1999 and from August 2000 till the date of reinstatement. Rule is made absolute accordingly with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.